THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.17401 OF 2006

DATE: 09th November 2006

Between:

Katta Srinivasa Rao, s/o Sri Kasulu,
aged 30 years, proprietor, Aravind Digital Studio
and Video, Shop No.1, Zilla Parishad
Shopping Complex, Maharanipeta,
Visakhapatnam.

... Petitioner.

And

Zilla Parishad, Visakhapatnam,
Represented by its Chief Executive Officer,
Visakhapatnam.

... Respondent.

* * *

ORDER:

The respondent herein filed W.V.M.P.No.1795 of 2006 to vacate the interim order dated 24.8.2006 made by this Court in W.P.M.P.No.21802 of 2006. At the request of both the counsel, the writ petition itself is being disposed of finally.

2. Sri A.Srinivasa Sarma, learned counsel representing the writ petitioner had taken this Court through the details narrated in para 3 of the affidavit filed in support of the writ petition and would contend that in the facts and circumstances of the case inasmuch as the writ petitioner is in possession of the premises in question,

the respondent cannot forcibly dispossess the writ petitioner, but may have to follow due procedure of law. Learned counsel also would submit that no doubt a suit was instituted in this regard, but the same was not numbered inasmuch as it was returned on the ground that the suit was not maintainable along with certain other queries. Hence, the counsel would submit that the forcible eviction, which is being resorted to by the respondent, is not to be permitted.

3. *Per contra*, Sri M.Prabhakar Rao, learned counsel representing the vacate stay petitioner, the respondent in the writ petition, had taken this Court through the averments made in the counter-affidavit and would submit that the writ petitioner is not a lessee under the Zilla Parishad at all and when that being so the writ petitioner cannot be permitted to contend that he is in possession of the property in question, and hence, his possession cannot be disturbed unless and until due process of law is followed. Hence, the counsel would submit that writ petition is liable to be dismissed.

4. Heard Sri A.Srinivasa Sarma, learned counsel representing the writ petitioner and Sri M.Prabhakar Rao, learned counsel representing the respondent.

5. The writ petition is filed praying for a writ of Mandamus declaring the action of the respondent in evicting the petitioner from the schedule property bearing Shop No.1 with electrical service connection bearing No.57358 in the ground floor of Zilla

Parishad Shopping Complex, situated at Maharanipeta, within the limits of Municipal Corporation of Visakhapatnam, bounded by

East: Shop No.2;
South- Passage;
West- Stair case; and
North- Vacant space

as arbitrary and illegal and consequently direct the respondent that in the event of leasing out the above said shop on any written terms and conditions, to give preference to the petitioner.

6. The facts of the case as narrated by the writ petitioner in brief are as hereunder.

The respondent is the owner and possessor and in its official capacity, of the schedule premises bearing Shop No.1 with electrical service connection bearing No.57358 in the ground floor of Zilla Parishad Shopping Complex, situated at Maharanipeta, within the limits of Municipal Corporation of Visakhapatnam, bounded by East- Shop No.2; South- Passage; West- Stair Case and North- Vacant space. It is stated that at the first instance, in the year 1986, the said premises was leased out to one M.Someswararao, however, he could not continue and the same was taken over in the year 1996 by one G.Prabhakara Rao, who had maintained a departmental store. The said Prabhakararao had sustained heavy losses and could not pay rent of Rs.40,000/-. Further it is stated that the writ petitioner was taken to Venkateswararao, the respondent Zilla Parishad by G.Prabhakararao and the said official imposed a condition for his

continuation in the premises, if and only if the petitioner pays the arrears of rent of Rs.40,000/- and accordingly the petitioner paid the arrears of rent to the respondent in the District Treasury of Visakhapatnam, by way of challan, however at the monthly rent of Rs.1,236/-. As such, the petitioner is lessee for the premises from March 2005 continuously and as on date the petitioner has been continuing in the premises. On different dates i.e., on 03.3.2005 Rs.8,000/-; on 16.4.2005 Rs.22,000/-; on 20.7.2005 Rs.13,000/-; on 29.10.2005 Rs.2,500/-; on 18.01.2006 Rs.5,000/-; and on 08.8.2006 Rs.9,077 and Rs.1,236/- likewise the petitioner paid rents to the respondent and there are no dues at all payable to the respondent. It is further stated that one Prasad, who is having some grudge against the petitioner and who is the owner of the Ramakrishna Photo Studio, situated at Collectorate Junction, Visakhapatnam, prevailed upon the respondent and instigated it to get the petitioner vacated from the premises. Having been influenced by the said Prasad and wholly ignoring other aspects, the respondent with the officials, rushed to the premises on 17.8.2006 at about 3-00 p.m. and tried to evict the petitioner from the premises. Being a *bona fide* lessee, the petitioner resisted such illegal acts. Several other factual details had also narrated in paras 4, 5, 6, 7 and 8 of the affidavit filed in support of the writ petition.

7. Counter-affidavit is filed in support of the vacate stay petition referred to supra by the respondent in the writ petition. It is stated that Shop No.1 is the property owned by the Zilla Parishad, Visakhapatnam, which was leased out by the Zilla Parishad to Sri

M.Someswara Rao, s/o late Venkata Rao, Yellammathota, Visakhapatnam, as per Progs. Rc.No.4284/85/G3/Dt.30.10.86, of the then Chief Executive Officer, Zilla Parishad, Visakhapatnam. The Zilla Parishad, Visakhapatnam, had never previously issued any allotment order of the said Shop No.1 to the petitioner since 30.10.86. Hence, the question of evicting the petitioner from the schedule premises bearing Shop No.1 does not arise. The electrical service connection to all the shops are registered in the name of owner i.e., Zilla Parishad, Visakhapatnam, headed by Chief Executive Officer, Zilla Parishad, Visakhapatnam. The A.P. TRANSCO authorities will be preparing bill for monthly/bimonthly consumption charges to the said schedule property in the name of the owner i.e., Zilla Parishad, Visakhapatnam. Hence, the petitioner's claim in asking him to evict from the shop, which was not allotted to him by the owner, is false and fabricated.

8. It is also further stated that the entire matter placed by the petitioner except that the shop was leased out to M.Someswara Rao in the year 1986, is false. So far there has been no orders issued by Zilla Parishad (owner) cancelling the lease of M.Someswara Rao since 1986. Thus, the allotment of Shop No.1 to M.Someswara Rao is still in force as on date. It is also stated that having agreed to the fact by the petitioner in para 3 (B) of the writ petition, the allottee of shop No.1 M.Someswara Rao was only authorized to approach the owner in case of any grievances arose during the contract period. The lessee M.Someswara Rao did not pay arrears of rent to the Zilla Parishad for certain periods. The Zilla Parishad (the owner) issued notices to the lessee by name

M.Someswara Rao to remit the arrears of rent, through the notice No.2364/03/B2/Dt. 17.12.04. Responding to the notice the amount of arrears for shop No.1 had been received by Zilla Parishad on different dates. It is also mandatory for the lessee to pay the electrical consumption charges consumed by him.

9. It is also further stated that the entire matter submitted by the petitioner in para 4 is totally false and fabricated and is an attempt to get false sympathy, which could not be supported by any authenticated material. It is further stated that whenever Zilla Parishad needs eviction of the shops by the tenants, it is being general practice of the Zilla Parishad to issue notices to such tenants. All other tenants who had completed lease terms including shop No.1 had been issued notices to vacate the shops. Further, specific stand is taken that the Zilla Parishad always has been dealing with the allottee M.Someswara Rao and all other statements made contra had been denied. Specific stand was taken that since the petitioner is a stranger, he is not connected with the present dispute, and hence, the question of evicting the said stranger would not arise at all.

10. Further, it was stated that the lease period of shop Nos.1, 2, 7 and 8 already had been exhausted and the said tenants were given notices to vacate their shops. Out of the above four tenants, the shop No.1 where the present controversy prevails and its authorized tenant M.Someswara Rao was also issued notice on par with the other tenants. As a part of the tender procedure, a fresh tender notice bearing No.4554/06/L1, dated 07.8.06, was

issued by the Zilla Parishad, inviting tenders for fresh tenants. Wide publicity was also given by publishing the same in the Eenadu Daily, a largest circulated daily news paper. It is also stated that the last date fixed for receipt of applications in the tender notice was 21.8.06 and date of opening of tenders was 22.8.2006. Necessary consideration has been given to the current tenants in the present tenders by providing special condition in the Tender Notice. In response to the Tender Notice the following persons have submitted their applications for issuance of Tender Schedule from the Zilla Parishad, Visakhapatnam, for shop No.1

1. K.Srinivasa Rao (the petitioner)
2. K.Someswara Rao
3. K.Ratnakara Rao
4. K.Sankara Rao

The No.1 applicant (petitioner) in his application dated 21.8.2006 had requested the Chief Executive Officer, Zilla Parishad, Visakhapatnam, for issue of Tender Schedule for allotment of shop No.1 on rental basis. In his application itself he had clearly mentioned that the shop No.1 is at present vacant and he had further affirmed in his application that he would abide by all rules and regulations of this office. He had also remitted challan issued in State Bank of India, Maharanipeta, Visakhapatnam, for Rs.100/- and requested to issue tender schedule for shop No.1.

11. It is further stated that among the above applicants the following persons had taken receipt of tender schedule prepared by the office and participated in the tenders as detailed below.

Sl.No.	Name of the applicant	Whether tender schedule received or not	Whether participated in the tenders
1.	K.Srinivasa Rao, (the petitioner)	Yes	No
2.	K.Someswara Rao	Yes	Yes
3.	K.Ratnakara Rao	Yes	Yes
4.	K.Sankara Rao	Yes	Yes

The extract of the office register showing the applicants taken receipt of the tender schedule is enclosed as Annexure-VI. At the time of opening of the tenders i.e., on 22.8.2006 at 4-00 p.m. the following tenderers had attended and signed in the attendance register in token of having observed the transparency in tender proceedings of this office on the day.

1. M.Suresh
2. S.Sambasiva Rao
3. S.M.Hayath
4. E.Atchuttam
5. Ch.Satyanarayana
6. K.Ratnakara Rao
7. P.Suribabu
8. Ch.Ammaji
9. S.Srinivas
10. K.Someswara Rao

But the petitioner Katta Srinivasa Rao had neither attended nor participated in the tenders on 22.8.2006. The highest bid received among the 3 tenders is for Rs.4,200/- towards monthly rent for shop No.1 as against the present rent being paid by the present

allottee for Rs.1,236/- p.m. Thus, the Zilla Parishad is benefited with the enhanced rent of Rs.4,200/- due to the tender procedure resulting in profit to the Government revenue.

12. It is further stated that in the above circumstances the Zilla Parishad had asked the present tenant M.Someswara Rao, who has been paying monthly rent of Rs.1,236/-, to vacate the shop No.1 vide office notice No.2364/03/L1, dated 29.8.2006, in order to facilitate re-allotment of the same shop to the highest bidder at Rs.4,200/- p.m. Thus, specific stand is taken that the writ petitioner being a stranger, has no legal right to contest against the tender procedure.

13. There is some material placed before this Court to show that the writ petitioner is in actual possession of the property and inasmuch as the respondent-Zilla Parishad had accepted the amounts from the writ petitioner, but the Zilla Parishad is contending that Someswara Rao alone continues to be actual allottee, totally ignoring subsequent intimation of the writ petitioner entering into the said premises.

14. On a careful analysis of the factual matrix, it appears that ultimately the writ petitioner came into possession and it is needless to say that he is not safeguarded by any of the conditions of the agreement between the respondent and the said Someswara Rao. Be that as it may, the main grievance of the writ petitioner is that he is being thrown out forcibly without following due process of law. It is no doubt true that when a person is in

lawful possession of the property or even after expiry of the lease period, the procedure may have to be followed before throwing such party from the premises in question. However, here, specific stand is taken by the respondent that the writ petitioner is a stranger and he has no legal right at all to be in possession of the property. In the light of the stand taken by the respondent in the affidavit filed in support of the vacate stay petition, this Court is satisfied that no legal right of the writ petitioner as such is infringed, but however it is stated that certain disputed questions of fact are involved in the matter and in view of the fact that the suit was returned, the writ petitioner was unable to pursue the remedy by way of suit.

15. In the light of the said fact, the writ petitioner is given liberty to approach civil Court if he is so advised. However, in view of the peculiar facts and circumstances, *status quo* as on today to be maintained for a period of two weeks.

16. The writ petition is accordingly dismissed with the above observations. No order as to costs.

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09-11-2006

Note:
Issue CC by tomorrow.

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BSB